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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 29TH DAY OF MAY 1998

BEFORE:

THE HON'BLE MR.JUSTICE H. RANGAVITTALACHAR

H. R. R. P. NO. 189/1994

Narayanasa,

S/o Parashuramsa Magaji,  
r/o Tumkurgalli, Hubli,  
District Dharwar.

Petitioner

(By Sri R.U.Goulay)

-vs-

Jagannath,

s/o Kumarappa Gondkar,  
65 years,  
Advocate,  
r/o Shattar Oni,  
Hubli, District: Dharwar.

Respondent

(By Sri K.S.Savanur for caveator/respondent)

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This revision petition is filed under Section 115 of the Code of Civil Procedure against the order dated 25.8.93 passed in RR No.73/90 on the file of the I Additional District Judge, Dharwad dismissing the revision petition and confirming the order dated 4.4.90 passed in HRC No.51/87 on the file of the Principal Munsiff, Hubli.

This revision petition coming on for hearing this day, the court made the following:

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ORDER

Respondent in this petition filed an eviction petition against the petitioner-tenant herein in respect of the premises situate at Hubli under Section 21 (1) (a) of the Karnataka Rent Control Act (for short 'the Act') claiming that the petitioner-tenant had not paid the demanded arrears of rent at the rate of Rs. 501/-p.m. for the period 1.1.1983 to 23.10.1984.

This petition was resisted by the respondent-tenant by filing a detailed statement of objection contending that the rate of rent payable by him was Rs. 100/-p.m. and not Rs. 501/-p.m. as claimed. The learned Munsiff after holding a detailed enquiry and after appreciating the evidence adduced by the parties held that even the admitted rate of rent payable by the tenant was not paid, within 2 months from the date of receipt of notice. Therefore he is liable to be evicted. Accordingly he allowed the eviction petition. Aggrieved by the said order the petitioner preferred a rent revision petition before the learned District Judge Hubli. The learned District Judge after reappraisal of the evidence agreed with the finding of the learned Munsiff and dismissed the petition. These two orders are challenged in this petition.

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Sri R.U.Goulay, learned counsel appearing for the petitioner tenant contended that the landlord has issued the statutory notice contemplated under Section 21 (1) (a) on 23.10.1984, but he instituted the eviction petition only in the year 1987, besides he had also filed a suit to recover the said arrears of rent and recovery of possession in a civil court. By this conduct must be held that the landlord has waived his right. In my view this submission has no substance. Section 21 (1) (a) makes it obligatory on the tenant to pay the rent for the use and occupation of the premises and on his failure in spite of notice of demand, he makes himself liable for eviction unless he specifically states the reason for such non-payment. In so far as the filing of the suit is concerned, the landlord is always entitled to recover the arrears of rent if the tenant fails to pay in spite of notice of demand by filing a civil suit as under Section 21 (1) (a) the landlord cannot force the tenant to pay the rent. Therefore the filing of the suit is of no <sup>relevance</sup> ~~reliance~~ for a proceeding under Section 21 (1) (a) of the Act.

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Sri Goulay nextly contended that while the trial was being conducted by the learned Munsiff, the landlord had voluntarily filed an affidavit marked as Exhibit P.6. A reading of the affidavit clearly discloses that the landlord has admitted that the tenant had paid the rent at the rate of Rs.501/-p.m. on the dates mentioned in the affidavit. If that is taken into consideration it clearly establishes that the tenant had not merely paid the demanded arrears of rent at Rs.100/-but he had paid in excess. He also submitted in this contextt that he was only liable to pay Rs.100/and not Rs.500/-as claimed by the landlord;In this case, even the rent of Rs.100/-p.m. as according to the tenant, he is liable to pay also has not bewen paid, is clear from a reading of the reply notice of the tenant,his objection to the eviction petition.

In answer to the notice of demand made by the landlord under Exhibit P.3, the tenant has admitted in the following terms:

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"Your client has been recovering the entire amount from my client up to the month and the issue of the said notice and that too under the circumstances mentioned above your client has concocted the said false case of arrears and default and my client is ready to pay the rent amount from 1.1.1984 till the date at the date at the rate of Rs.100/-p.m. as stated above".

The tenant in the objection statement has reiterated his stand wherein he has stated:-

"The respondents has paid all the rent till the month of the issuance of the notice by the petitioner. The respondent is ever ready and willing to pay the amount of rent at the agreed rate and at the rate of Rs.100/-p.m. from the said period as mentioned above".

By a reading of the above, it is clear that the tenant has admitted in unequivocal terms not once but repeatedly that he did not pay the arrears of

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rent even at the rate of Rs.100/-p.m. within 2 months from the date of demand. If Exhibit P.6 is perused carefully it does not indicate in any manner that the landlord has admitted that the tenant had paid the rent at the rate of Rs.500/- or Rs.100/-p.m. as demanded in the legal notice. The affidavit is filed for a direction to the tenant to produce the rent receipts<sup>an</sup>, the particulars stated therein, for the purpose of proving that the rate of rent was not Rs.100/-but Rs.500/-p.m. It is not possible to say by a reading of the said affidavit that the tenant had paid excess of rent or was not due any rent even at the admitted rates for the period demanded. Besides, it is important to state that the tenant did not even choose to cross-examine the landlord on this aspect so as to elicit his answer nor he has said anything about it. No such contention was taken before the learned Munsiff or the learned District Judge. Therefore no significance can be attached to the affidavit.

~~The rent receipts Exhibits P.6 to P.36 does not pertain to the relevant period.~~ At this stage Sri Goulay submitted that by looking at the

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receipts Exhibits P.6 to P.36 it has to be held that the tenant had paid in excess of the rent at the rate of Rs.100/p.m. These receipts pertain to some of the months in 1972,1980, 1981, 1982, 1983 and 1984 and by mere looking at the receipts it is not possible to say that the tenant was not due the demanded rents even at the rate of Rs.,100/-p.m. More so when the tenant in his reply to the notice Exhibit P.3. and in the objection statement to the main petition has clearly admitted that he had not paid the rents. Therefore no significance can be attached to the said receipts.

The learned Munsiff and the learned District Judge in appreciation of the evidence have come to the conclusion that the tenant has not paid the rents even at the rate of Rs.100/-p.m. which according to him was the monthly rent for the period demanded in the notice within 2 months and therefore liable to be evicted. The findings of the courts below cannot be faulted. I find no merit in the petition. The petition is liable to be dismissed and it is accordingly dismissed.

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At this stage the learned counsel appearing for the tenant prayed for 2 years time to vacate the premises. The learned counsel appearing for the landlord opposed for grant of time beyond six months. Having regard to the facts and circumstances of the case the tenant is granted one and a half years time to vacate the premises subject to the following conditions:

1. That he shall file an affidavit undertaking to voluntarily vacate the premises.

2. The affidavit shall be filed within 6 weeks from today, after serving a copy on the other side.

3. That he shall pay the monthly rents regularly as and when it falls due without default.

4. That he shall not sub-let or sub-lease the premises.

Sd/-  
JUDGE